



*Office of the United States Attorney  
District of Arizona*

FOR IMMEDIATE RELEASE  
April 2, 2007

For Information Contact Public Affairs  
WYN HORNBUCKLE  
Telephone: (602) 514-7625  
Cell: (602) 525-2681

## **NINTH CIRCUIT UPHOLDS DEFENDANT'S TUCSON DRUG CONVICTION AND RULES THAT CRIMINALS CANNOT ESCAPE LIABILITY BY DELIBERATELY AVOIDING THE TRUTH**

PHOENIX, ARIZONA - The United States Attorney's Office for the District of Arizona announced today, that the Ninth Circuit Court of Appeals, sitting en banc, issued an opinion affirming the defendant's federal drug conviction and approving of its principle announced 30 years ago – and widely adopted by the federal courts – that a defendant's "willful blindness" or "deliberate ignorance" is not a defense.

The defendant in this case, Carmen Denise Heredia, was apprehended by Border Patrol agents at a checkpoint while driving from Nogales to Tucson. Agents discovered approximately 350 pounds of marijuana in the trunk of the vehicle, along with fabric softener sheets used to mask the odor. The defendant's passengers included her two small children, her mother, and her aunt. At trial, the defendant denied that she knew there were drugs in the car. She claimed that, although the detergent smell and other facts made her suspect there were drugs in the car, she came to this realization on the freeway too late to investigate and confirm her suspicions. The government contested this story and argued that all of the circumstances – including the amount of marijuana, defendant's inconsistent statements, the detergent smell, and other facts – showed that the defendant knew there was marijuana in the vehicle. It also argued that the defendant's defense amounted to a claim that she was "deliberately ignorant" or "willfully blind" and that, based on United States v. Jewell, 532 F.2d 697 (9<sup>th</sup> Cir. 1976) ("Jewell" instruction), the jury needed to know that deliberate ignorance was not a defense to the crime. The district court judge, the Honorable John M. Roll, agreed and submitted such an instruction. The jury convicted the defendant of possessing marijuana with the intent to distribute it, in violation of 21 U.S.C. § 841(a)(1).

The defendant appealed, and a three-judge panel of the Ninth Circuit initially reversed the conviction. However, with approval of the Solicitor General of the United States, the U.S. Attorney's Office for the District of Arizona filed a petition for rehearing, which the Ninth Circuit granted, agreeing to rehear the case en banc (15 judges participating), and affirmed the conviction in today's opinion. This case attracted a great deal of attention because of the widespread implications, particularly considering that the defendant asked the Ninth Circuit on rehearing to overrule its Jewell decision. The defendant was represented on rehearing by the law firm of Sidley Austin in Washington D.C., and amicus briefs were filed on the defendant's behalf by the National Association of Criminal Defense Lawyers (lead attorney: Kenneth W. Starr, Kirkland & Ellis), and the Arizona Attorneys for Criminal Justice.

In its published opinion announced today in United States v. Heredia, No. 03-10585 (9<sup>th</sup> Cir. April 2, 2007), the Ninth Circuit declined to overrule Jewell, and reiterated that a defendant cannot invoke a defense of willful blindness to escape criminal liability. It noted that its Jewell decision had been adopted nationally by other federal courts of appeal and Congress had shown its implicit approval of the case. The en banc Ninth Circuit approved of how the trial judge had handled the

defendant's trial, including the trial judge's use of the Jewell instruction. Thus, the Ninth Circuit has re-affirmed that a person who deliberately avoids learning the truth about whether he is carrying drugs is just as guilty as if he actually knows there are drugs in the car. Willful blindness is not a defense.

The government was represented before the Ninth Circuit Court of Appeals by Assistant U.S. Attorneys Christina M. Cabanillas, George Ferko and Bruce M. Ferg.

CASE NUMBER: CR 02-00773-TUC-JMR (JJM)  
RELEASE NUMBER: 2007-098(Heredia)